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to confess judgment, and it is error to require it. And even in proper cases for such confession, it should not be required unconditionally, but the order requiring the confession should provide that the judgment be thereafter dealt with as the court of equity may direct. While courts of equity are invested with discretion as to the terms upon which they will grant injunctions, yet it is a discretion to be exercised on well-established principles of equity and law, and is subject to review by the appellate court.

NOELL V. NOELL.—Decided at Wytheville, July 23, 1896.—*Cardwell, J.* Absent, *Harrison, J.*:

1. ACT OF LIMITATIONS—*New promise—Notice.* Although a plaintiff may, without pleading it, rely upon a new promise to repel the bar of the statute of limitations pleaded by the defendant to an action on the original cause of action, provided he gives the notice required by the statute (Code, sec. 2922), evidence of the new promise cannot be received in the absence of such notice.

2. SUMMONS—*Return day—Void process—Sec. 3220 of Code mandatory.* A summons to commence a suit which is made returnable on the day of issue is a void summons, and all records based thereon and proceedings had are likewise void. Sec. 3220 of the Code, which provides that the process shall be issued before the rule day to which it is returnable, but may be executed on or before that day, is mandatory.

3. ELECTION BETWEEN CAUSES OF ACTION—*Limitations.* Where a plaintiff has two causes of action open to him and elects one, and adapts his pleading and proofs thereto, he will be bound by his election and cannot thereafter adopt the other. The act of limitations applicable will be the one appropriate to the cause of action selected.

4. NEW TRIAL—*Verdict against evidence or without evidence.* A trial court should not set aside a verdict as contrary to the law and the evidence, when it appears that the verdict was not plainly against the evidence, or without evidence to support it.

TOWN OF BRIDGEWATER V. ALLEMONG.—Decided at Staunton, September 17, 1896.—*Keith, P.*:

1. APPELLATE PRACTICE—*Review—Motion for new trial.* Unless the record shows that a motion was made for a new trial in the court below, was overruled, and the action of the court excepted to, this court will not review the ruling of the trial court in excluding evidence offered, although the ruling was excepted to, and a bill of exception signed and made a part of the record. *Newberry v. Williams*, 89 Va. 298, approved.

DIDIER AND OTHERS V. PATTERSON AND OTHERS.—Decided at Staunton, September 17, 1896. *Riely, J.*:

1. ASSIGNMENTS—*Future advances—Absolute assignment may be shown to be a mortgage—Reservation of surplus—Fraud in law and fraud in fact.* A chose in action may be assigned as a security for an existing debt and also for future advances. Although the assignment is absolute and unconditional in its terms, it may be